



**4310-GG-P**

## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Land Management**

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### **Final Supplementary Rules for the Morley Nelson Snake River Birds of Prey**

#### **National Conservation Area, ID**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Final Supplementary Rules.

**SUMMARY:** The Bureau of Land Management (BLM) is finalizing supplementary rules for all BLM-administered public lands within the approximately 483,700-acre Morley Nelson Snake River Birds of Prey National Conservation Area (NCA), addressed in the September 2008 Resource Management Plan (RMP) and Record of Decision (ROD). The Snake River Birds of Prey NCA RMP identifies implementation level decisions which describe an array of management actions designed to conserve natural and cultural resources on BLM administered land while providing for recreational opportunities. These supplementary rules will help enforce the decisions in the NCA RMP.

**DATES:** These supplementary rules are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may direct your inquiries to the Bureau of Land Management, Morley Nelson Snake River Birds of Prey National Conservation Area, 3948 Development Ave, Boise, Idaho 83705; or by email: [jfluckiger@blm.gov](mailto:jfluckiger@blm.gov).

**FOR FURTHER INFORMATION CONTACT:** Jared Fluckiger, Outdoor Recreation Planner, at 208-384-3342 or by email at [jfluckiger@blm.gov](mailto:jfluckiger@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact Mr. Fluckiger.

#### **SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of Public Comments
- III. Discussion of Supplementary Rules

#### IV. Procedural Matters

##### **I. Background**

Public Law 103-64 established the NCA in 1993 for the "...conservation, protection, and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith..." The NCA's RMP was completed in September 2008.

The NCA is located in southwestern Idaho, within a 30-minute drive of Idaho's capital, Boise, where almost half of the State's population resides. It is located in Ada, Canyon, Elmore, and Owyhee counties and encompasses approximately 483,700 public land acres extending 81 miles along the Snake River. The NCA includes the 138,000-acre Orchard Training Area, used by the Idaho Army National Guard for military training since 1953. Within its boundary are approximately 41,200 State, 4,800 private, and 1,600 military acres, and 9,300 acres covered by water. These lands are not affected by the NCA designation or subsequent RMP decisions.

These final supplementary rules will help the BLM achieve management objectives and implement RMP decisions. They will also provide the BLM with enforcement capability to help prevent damage to natural resources, and provide for public health and safety.

##### **II. Discussion of Public Comments**

The BLM published the proposed supplementary rules in the Federal Register on July 18, 2012 (77 FR 42327). Public comments were accepted for a 60-day period ending on September 17, 2012. The BLM received two comments. Both comments expressed concern that the prohibition against rock climbing and rappelling will apply to a style of climbing commonly referred to as "bouldering." In response to these comments, the proposed supplementary rules have been revised to define and allow bouldering, except on the canyon walls of the Snake River within the NCA.

##### **III. Discussion of Supplementary Rules**

In keeping with the BLM performance goal of reducing threats to public health, safety, and property, supplementary rules are necessary to protect the natural and cultural resources within the NCA as described in the NCA RMP; allow for safe public recreation and protection of public health; reduce the potential for environmental damage; and enhance the safety of visitors and neighboring residents.

The final supplementary rules will prohibit rock climbing and rappelling on BLM-administered public land within the Morley Nelson Snake River Birds of Prey NCA because these activities adversely effect the 16 species of raptors that nest in or on canyon walls at various times of the year. This prohibition will help protect a unique assemblage of raptors that occupy the Snake River Canyon and adjacent lands of southwestern Idaho. This raptor aggregation, considered to be one of the densest in North America, and perhaps the world, was the reason for designating the NCA in 1993.

Additionally, the final supplementary rules will prohibit rock climbing and rappelling on BLM-administered public land within the NCA because of the widespread distribution of unstable basalt rock. This unstable basalt rock exists throughout the NCA in cliffs, rimrocks, and rocky outcroppings and poses a significant safety hazard to those climbing and rappelling on them.

In their comments, the public requested that the BLM reconsider whether bouldering will be considered a prohibited act under the prohibition against rock climbing and rappelling. Bouldering is a style of rock climbing that occurs without a rope and is normally limited to very short climbs. The BLM has determined that bouldering does not present safety hazards or potential harm to raptors. Therefore, bouldering will be allowed throughout the NCA and prohibited only on the cliff walls, which are primarily unstable basalt.

Prohibiting open fires outside of BLM-approved fire rings will help avert human-caused wildfire, which in turn will help prevent damage to archeological sites and slickspot peppergrass (*Lepidium papilliferum*), a federally listed species under the Endangered Species Act. The final supplementary rules state that additional restrictions on building, maintaining, attending, or using a fire, campfire, or stove fire may be imposed during periods of high fire danger. For example, statewide Fire Prevention Orders or Stage II fire restrictions may be implemented for all BLM-managed lands in a given geographic area when conditions warrant and may involve prohibition of all open fires, even in approved fire rings.

In the past, some of the NCA's significant cultural resources have been damaged by paintball gun use. Prohibiting paintball activities within the Snake River Canyon and within ¼ mile of the canyon rim eliminates the adverse effects to early cabin architecture, ferry crossings, Oregon Trail segments, and petroglyphs.

#### **IV. Procedural Matters**

Executive Orders 12866 and 13563, Regulatory Planning and Review

The final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563. They will not have an effect of \$100 million or more on the economy. They will not adversely affect, in a material way, the economy; productivity; competition; jobs; environment; public health or safety; or State, local, or tribal governments or communities. The final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They will not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor will they raise novel legal or policy issues. The supplementary rules merely contain rules of conduct for public use of a limited selection of public lands to protect public health and safety.

#### National Environmental Policy Act (NEPA)

The BLM prepared an environmental impact statement as part of the development of the NCA RMP. During that NEPA process, many alternative decisions for the NCA were fully analyzed and offered for public comment, including the substance of these final supplementary rules. The pertinent analysis can be found in Chapter 4 of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Snake River Birds of Prey National Conservation Area, April 2006. The ROD for the RMP was signed by the Idaho BLM State Director on September 30, 2008. These supplementary rules provide for enforcement of plan decisions. The rationale for the decisions made in the plan is fully covered in the ROD. It is available for review in the BLM administrative record at the address specified in the ADDRESSES section.

#### Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601-612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules will merely establish rules of conduct for use of a limited area of public lands and will have no effect on business entities of any size. Therefore, the BLM has determined, under the RFA, that the final supplementary rules will not have a significant economic impact on a substantial number of small entities.

#### Small Business Regulatory Enforcement Fairness Act

These final supplementary rules do not constitute a “major rule” as defined at 5 U.S.C. 804(2). They will not result in an effect on the economy of \$100 million or more, an increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. These final supplementary rules will merely establish rules of conduct for use of a limited area of public lands and do not affect commercial or business activities of any kind.

#### Unfunded Mandates Reform Act

These final supplementary rules will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year nor do they have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the BLM is not required to prepare a statement or plan under Subchapter II of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1571).

#### Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings).

These final supplementary rules will not have significant takings implications nor will they be capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that these rules will not cause a “taking” of private property or require preparation of a takings assessment.

#### Executive Order 13132, Federalism

The final supplementary rules will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The final supplementary rules will not conflict with any law or regulation of the State of Idaho. Therefore, in accordance with Executive Order 13132, the BLM has determined that these final supplementary rules will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### Executive Order 12988, Civil Justice Reform

The BLM has determined that these final supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

#### Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The BLM has found that these final supplementary rules do not include policies that will have tribal implications.

#### Information Quality Act

The Information Quality Act (Section 515 of Public Law 106-554) requires Federal agencies to maintain adequate quality, objectivity, utility, and integrity of the information that they disseminate. In developing these supplementary rules, the BLM did not conduct or use a study, experiment, or survey or disseminate any information to the public.

#### Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final supplementary rules will not constitute a significant energy action. The final supplementary rules will not have an adverse effect on energy supplies, production, or consumption, and have no connection with energy policy.

#### Paperwork Reduction Act

These final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521.

#### Author

The principal author of these supplementary rules is Stanley Buchanan, Boise District Law Enforcement Ranger, Bureau of Land Management.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1-6, the State Director establishes supplementary rules for BLM-administered lands covered under the Snake River Birds of Prey NCA RMP, to read as follows:

#### SUPPLEMENTARY RULES FOR THE MORLEY NELSON

#### SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA

#### Definitions:

Rock Climbing: A sport/technique in which participants climb up, down or across natural rock formations, usually with ropes and other equipment. Rock climbing is similar to scrambling (another activity involving

the scaling of hills and similar formations), but climbing is generally differentiated by its sustained use of hands to support the climber's weight as well as to provide balance.

Bouldering: A style of rock climbing undertaken without a rope and normally limited to very short climbs over a crash pad (called a bouldering mat) so that a fall will not result in serious injury.

Rappelling: A descent of a vertical surface, as a cliff or wall, by sliding down a belayed rope that is passed under one thigh and over the opposite shoulder or through a device that provides friction, typically while facing the surface and performing a series of short backward leaps to control the descent.

Improved Campsite: A specific location identified by the BLM for camping. Improved campsites include individual sites in developed campgrounds and developed recreation sites for camping that may or may not contain picnic tables, shelters, parking sites, and/or grills. All improved campsites are identified by a BLM map or sign.

Open Fires: Any fire not in a BLM-approved metal fire ring.

On BLM-administered public land within the Morley Nelson Snake River Birds of Prey National Conservation Area, you must comply with the following supplementary rules:

1. Rock climbing and rappelling are prohibited on all lands administered by the BLM within the NCA. Bouldering is permitted, provided it does not occur on the canyon walls of the Snake River within the NCA.
2. Open fires are prohibited on all lands administered by the BLM within the NCA. Campfires may only be located on improved campsites within BLM-approved metal fire rings on all lands administered by the BLM within the NCA. Additional restrictions may be imposed during periods of high fire danger.
3. Paintball guns and equipment may not be used within the Snake River Canyon or within ¼ mile of the canyon rim.

PENALTIES: On public lands under Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0-7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

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